

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

**HENRY C. BARNETT,**

Petitioner,

V.

K. HOLLAND (Warden, CCI-Tehachapi),

Respondent.

**Case No. LA CV 16-02465-VBF-FFM**

## ORDER

Overruling Petitioner Barnett's Objections;  
Adopting the Report & Recommendation;

**Granting Respondent's Motion to Dismiss;  
Dismissing Habeas Petition as Untimely;  
Dismissing the Action With Prejudice;**

Directing Issuance of Separate COA Ruling;  
Directing Entry of Separate Final Judgment;  
**Terminating and Closing the Action (JS-6)**

Pursuant to 28 U.S.C. § 636(b)(1), the Court has reviewed the Petition for Writ of Habeas Corpus by a Person in State Custody Pursuant to 28 U.S.C. section 2254 ("petition") (CM/ECF Document (“Doc”) 1) as amended by the Magistrate Judge’s Order granting leave to amend (Docs 10-11), the respondent warden’s motion to dismiss and accompanying memorandum (Doc 17), the relevant decision(s) of the California state courts, the “lodged documents” submitted by the respondent in paper form (Docs 18-1 through 18-9, listed in the Notice of Lodging), petitioner's brief opposing the motion to dismiss (Doc 20), the Report and Recommendation (“R&R”) issued by the United States Magistrate Judge pursuant to Fed. R. Civ. P. 72(b)(1) and 28 U.S.C. § 636(b)(1)(B)

1 on December 16, 2016 (Doc 25), petitioner's timely objections filed January 3, 2017 (Doc 26), and  
2 the applicable law.

3 “Federal Rule of Civil Procedure 72(b)(2) gave respondent a right to respond to the  
4 objections, but the time to do so has elapsed and respondent has filed neither a response nor a request  
5 for an extension of time. Accordingly, the Court proceeds to the merits without waiting further.”  
6 *Ruelas v. Muniz*, No. SA CV 14-01761-VBF, 2016 WL 540769, \*1 (C.D. Cal. Feb. 9, 2016).

7  
8 **“As required by Fed. R. Civ. P. 72(b)(3), the Court has engaged in de novo review of**  
9 **the portions of the R&R to which petitioner has specifically objected and finds no defect of**  
10 **law, fact, or logic in the . . . R&R.”** *Rael v. Foulk*, No. LA CV 14-02987 Doc. 47, 2015 WL  
11 4111295, \*1 (C.D. Cal. July 7, 2015), *COA denied*, No. 15-56205 (9th Cir. Feb. 18, 2016).

12 **“The Court finds discussion of [the] objections to be unnecessary on this record.** The  
13 Magistrates Act ‘merely requires the district judge to make a de novo determination of those portions  
14 of the report or specified proposed findings or recommendation to which objection is made.’” It  
15 does not require the district judge to provide a written explanation of the reasons for rejecting  
16 objections. *See MacKenzie v. California AG*, SA CV 12-00432, 2016 WL 5339566, \*1 (C.D. Cal.  
17 Sept. 21, 2016) (Fairbank, J.) (quoting *United States ex rel. Walterspiel v. Bayer AG*, 639 F. App’x  
18 164, 168-69 (4<sup>th</sup> Cir.) (per curiam) (“The district court complied with this requirement. Accordingly,  
19 we find no procedural error in the district court’s decision not to address specifically Walterspiel’s  
20 objections.”), *cert. denied*, – U.S. –, 137 S. Ct. 162 (2016)) (brackets & internal quote marks  
21 omitted). “This is particularly true where, as here, the objections are plainly unavailing.” *Smith v.*  
22 *California Judicial Council*, No. ED CV 14-01413-VBF Doc. 93, 2016 WL 6069179, \*2 (C.D. Cal.  
23 Oct. 17, 2016).

24 Accordingly, the Court will accept the Magistrate Judge's factual findings and legal  
25 conclusions and implement his recommendations.

26  
27 ORDER

28 Petitioner's objection [**Doc #26**] is **OVERRULED**.

1 Magistrate Judge Mumm's well-reasoned Report and Recommendation [Doc #25] is  
2 **ADOPTED.**

3 The respondent's motion to dismiss [Doc #17] is **GRANTED.**

4 The 28 U.S.C. § 2254 habeas corpus petition s **DISMISSED with prejudice as untimely.**

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6 The Court will rule on a certificate of appealability by separate order.

7  
8 Final judgment will be entered in favor of respondent consistent with this order.

9 "As required by Fed. R. Civ. P. 58(a), the Court will enter judgment by separate document."  
10 *Toy v. Soto*, 2015 WL 2168744, \*1 (C.D. Cal. May 5, 2015) (citing *Jayne v. Sherman*, 706 F.3d 994,  
11 1009 (9th Cir. 2013)) (footnote 1 omitted), *appeal filed*, No. 15-55866 (9th Cir. June 5, 2015).

12  
13 This action is **DISMISSED** with prejudice.

14 **The case SHALL BE TERMINATED and closed (JS-6).**

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17 Dated: Wednesday, February 22, 2017



18 Valerie Baker Fairbank  
19 Senior United States District Judge  
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